

requested. Requests must be filed within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing to the Service's Pacific Islands Administrator (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined pursuant to the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

- Carr, G. D. 1982. Unpublished status survey of *Wilkesia hobbii* St. John (Hobdy's iliau). U.S. Fish and Wildlife Service. 24 pp.
- St. John, H. 1971. The status of the genus *Wilkesia* (Compositae), and discovery of a second Hawaiian species. Occas. Pap. B. P. Bishop Museum 24(8):127-138.

Author

The primary author of this proposed rule is Dr. Derral R. Herbst, Office of Environmental Services, U.S. Fish and Wildlife Service, Pacific Islands, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541-2749 or FTS 551-2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
<i>Wilkesia hobbii</i>	Dwarf iliau	U.S.A. (HI)	E		NA	NA

Dated: September 19, 1989.

Richard N. Smith,
Acting Director, Fish and Wildlife Service.
[FR Doc. 89-23054 Filed 9-29-89; 8:45 am]
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50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Hawaiian Plants of the Genus *Remya*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine the three species of the genus *Remya* to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). The three species of this genus are endemic to the islands of Kauai and Maui, Hawaiian Islands. The greatest immediate threat to their survival is the degradation of their habitat by grazing and browsing feral and domesticated animals. The quality of the Hawaiian environment has

undergone a steady degradation since man's arrival in the islands due to the introduction of alien species. Feral and domesticated browsing and grazing animals and competing naturalized plants have impacted the *Remya* species and their habitat. A determination that the three species of the genus *Remya* are endangered would implement the Federal protection and recovery provisions provided by the Act. Critical habitat is not proposed. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by December 1, 1989. Public hearing requests must be received by November 16, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Pacific Islands Administrator, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ernest F. Kosaka, Field Supervisor, at the above address (808/541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Remya is a genus of small perennial shrubs in the aster family (Asteraceae, also known as Compositae). The genus comprises three species and is endemic to the Hawaiian Islands. Until 1985, there were two known species, *R. kauaiensis* and *R. mauensis*, both described in 1888 (Hillebrand 1888). Apparently neither species has been common during historical times, and they rarely have been collected.

Remya kauaiensis was first collected prior to 1871 by Valdemar Knudsen at "Waimea" on Kauai. Knudsen sent the specimen to William Hillebrand, a Honolulu physician, who described it as a new species. It was next collected more than 80 years later by Otto Degener in 1952 in Kokee State Park, Kauai. The species was considered extinct until 1983 when it was rediscovered by Galen Kawakami, a forester on Kauai who discovered two small populations, both on State land in the Kokee area. Three additional small populations were discovered in the same general area in 1985 and 1986 by Timothy Flynn of the Pacific Tropical Botanical Garden.

Remya muiensis was collected twice by William Hillebrand on West Maui between 1851 and 1871, and again in 1920 by Charles Forbes, also on West Maui. It was thought to be extinct until its rediscovery in 1971 by L. E. Bishop, W. Gagne, and S. Montgomery in Manawainui Gulch, West Maui. More recently, a small population has been found in an adjacent gulch.

Remya montgomeryi was discovered in 1985 by Steven Montgomery on the sheer, virtually inaccessible cliffs below the upper rim of Kalalau Valley, Kauai, and presently is known only from that population (Wagner and Herbst 1987).

The genus *Remya* was published in 1876 by George Bentham in Bentham and Hooker's *Genera plantarum*. It was named in honor of Ezechiel Jules Remy, a French naturalist and ethnobotanist who visited Hawaii twice during an extended trip around the world in 1851 to 1863.

The members of this genus are small shrubs, about 3 feet tall, with many slender, sprawling or scandent to weakly erect branches. The branches are glabrous in *R. montgomeryi*, but covered with a fine tan fuzz near their tips in the other two species. The leaves are narrow, up to about 6 inches long, and are bunched at the ends of the branches. The leaves are coarsely toothed along the edges, and are green on the upper surface. The lower surface is green in *R. montgomeryi*, while in the other two species it is covered with a dense mat of fine white hairs. The flowers are small, about 3/10 inch in diameter, dark yellow, and densely clustered at the ends of their stems (Wagner *et al.* in press).

Because of the sprawling habit of the plant, and the often dense growth of the surrounding vegetation, it is difficult to determine the exact number of individuals in a population; however estimates have been made. *Remya kauaiensis* is known from five small populations in the Kokee area of Kauai. The populations are of two to eight plants each with a total of about two dozen individuals. *Remya muiensis* is known from two small populations on adjacent ridges on West Maui; there appears to be 20 to 25 plants in one population and 1 to 2 in the other. *Remya montgomeryi* is known from a single population on the rim of Kalalau Valley, Kauai; its size is unknown, but it consists of only a few plants.

The extremely small size of the populations is a serious potential threat to these species. The limited gene pool may depress reproductive vigor, or a single environmental disturbance could destroy a significant percentage of the known individuals. However, the main

threat to the members of this genus probably is the degradation of their habitat due to the introduction of alien plants and animals.

Federal government action on members of this genus began as a result of Section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27823) accepting the report as a petition within the context of Section 4(c)(2) (now Section 4(b)(3)(A)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. In this and subsequent notices, *R. kauaiensis* was included as extinct or probably extinct, and *R. muiensis* was included as endangered. As a result of this review, on June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered pursuant to Section 4 of the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the *Federal Register* (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480), including *R. muiensis* as a Category 1 candidate, meaning that the Service had substantial information indicating that listing was appropriate; *R. kauaiensis* was included as a Category 1* candidate, meaning that it possibly was extinct. Section 4(b)(3)(B) of the Act, as amended, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments to the Act requires all petitions pending on October 1, 1982, be treated as having been newly submitted on that date. The latter was the case for *R. muiensis* and *R. kauaiensis* because the Service had accepted the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with Section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR

2485). Such a finding requires the petition to be recycled, pursuant to Section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, and 1988. Publication of the present proposal constitutes the final 1-year finding. *Remya montgomeryi* was not included in any of the notices as it was not discovered until 1985 and was not described as a new species until 1987.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the three species of *Remya* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The quality of the Hawaiian environment has undergone a steady degradation since man's arrival in the islands due to the introduction of alien species. Browsing and grazing feral and domesticated animals and competing naturalized plants have impacted the *Remya* species and their habitat through erosion and invasion of habitat by more aggressive species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be a factor, but unrestricted scientific collecting or excessive visits could seriously affect the species because of their limited numbers and the potential for erosion resulting from soil disturbance.

C. *Disease or predation.* Due to the extreme rarity of the three species, little is known about the species or their predators. It can definitely be stated, however, that much potential habitat for the plant has been destroyed by cattle, goats, pigs, and deer, and that most of the presently existing plants are found growing in areas relatively inaccessible to these animals. The destruction of native vegetation in Hawaii by feral animals is well documented, and it can safely be predicted that they are a very real threat to the survival of these species.

D. *The inadequacy of existing regulatory mechanisms.* Most of the plants are found within a State park, forest reserve, or plant sanctuary. State regulations prohibit the removal, destruction, or damage of plants found on these lands. However, these

regulations are difficult to enforce due to limited personnel. Hawaii's Endangered Species Act (HRS, Sect 195D-4(a)) states that "Any species of wildlife or wild plant that has been determined to be an endangered species pursuant to the Endangered Species Act (of 1973) shall be deemed to be an endangered species under the provisions of this chapter * * * Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (Sect. 195D-5(c)). Funds for these activities could be made available under Section 6 of the Act (State Cooperative Agreements). Therefore, listing of this genus would reinforce and supplement the protection available to these species under State law. Also, the Act would offer additional protection to these species, as it is now a violation of the Act to remove, cut, dig up, damage, or destroy any listed plant in knowing violation of a State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other natural or manmade factors affecting its continued existence. The extremely small size of each of the extant populations is in itself a considerable threat to these species. The limited gene pool may depress reproductive vigor, or a single natural or man-caused environmental disturbance could destroy a significant percentage of the known extant individuals.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list the three genus *Remya* species as endangered. Only 8 populations with a total of about 60 individuals remain in the wild, and these face threats of browsing and grazing by feral and domestic animals, and general habitat degradation. Because the three species (entire genus) are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose any habitat of a species that is considered to be critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species at this time. Such a

determination would result in no known benefit to the species. All populations are on State land; Federal and State agencies can be alerted to their presence without the publication of critical habitat descriptions and maps. Publication of such descriptions and maps would increase the degree of threat from taking or vandalism because live specimens of *Remya* could be of interest to curiosity seekers or collectors of rare plants. Also, as the plants grow mostly on steep slopes, visits to the area could result in severe erosion problems, an additional threat to the species. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time: such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Since the *Remya* species are known to occur on State land, cooperation between Federal and State agencies is necessary to provide for their conservation. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below:

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its

critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal involvement is known or anticipated that would affect *Remya* species as all known sites for these plants are on State-owned land.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to the three species of *Remya* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction of listed plants on Federal lands, and the removal, cutting, digging up, or damaging or destroying of these plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issued, since the species are not common in cultivation nor in the wild.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203 (703/358-2104).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the three species of *Remya*;

(2) The location of any additional populations of any of the three *Remya* species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject area and the possible impacts on the three species of *Remya*.

The final decision on this proposed rule will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing to the Service's Pacific Islands Administrator (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined pursuant to the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

- Herbst, D. R. 1988. Unpublished status survey of the genus *Remya*. U.S. Fish and Wildlife Service. 41 pp.
- Hillebrand, Wm. Flora of the Hawaiian Islands. Facsimile ed., 1965. Hafner Publ. Co., N.Y. 673 pp.
- Wagner, W. L. and D. R. Herbst. 1987. A new species of *Remya* (Asteraceae: Astereae) on Kaua'i and a review of the genus. *Systematic Botany* 12(4):601-608.
- Wagner, W. L., D. R. Herbst, and S. H. Sohmer. In Press. Manual of the flowering plants of Hawai'i. University of Hawaii Press and Bishop Museum Press.

Author

The primary author of this proposed rule is Dr. Derral R. Herbst, Office of Environmental Services, U.S. Fish and

Wildlife Service, Pacific Islands, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541-2749 or FTS 551-2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species. Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
<i>Remya kauaiensis</i>	None	U.S.A. (HI)	E	NA	NA
<i>Remya mauensis</i>	Maui remya	U.S.A. (HI)	E	NA	NA
<i>Remya montgomeryi</i>	None	U.S.A. (HI)	E	NA	NA

Dated: September 19, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

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50 CFR Part 17

RIN: 1018-AB31

Endangered and Threatened Wildlife and Plants; Proposal To List the Fanshell as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list a freshwater mussel, the fanshell (*Cyprogenia stegaria* (= *C. irrorata*)), as an endangered species under the

Endangered Species Act of 1973, as amended (Act). This freshwater mussel historically occurred in the Ohio River and many of its large tributaries in Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Kentucky, Tennessee, Alabama, and Virginia. Presently, the fanshell is believed to be reproducing in only three rivers—the Green and Licking Rivers in Kentucky, and the Clinch River in Tennessee and Virginia. Additionally, small, apparently nonreproducing populations (based on the collection of a few old specimens in the 1980s) may still persist in the Muskingum River, Ohio; the Kanawha River, West Virginia; the Wabash River system in Illinois and Indiana; Tygarts Creek, Kentucky; and the Tennessee and Cumberland Rivers in Tennessee. The distribution and reproductive capacity of this species has been seriously impacted by the construction of impoundments and

navigation facilities, dredging for channel maintenance, sand and gravel mining, and water pollution. Comments and information are sought from the public concerning this proposal.

DATES: Comments from all interested parties must be received by December 1, 1989. Public hearing requests must be received by November 16, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address (704/259-0321 or FTS 672-0321).